



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

BJG
Docket No: 6830-01
4 October 2001

MA [REDACTED] SMC
[REDACTED]
[REDACTED]

Dear Major [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 3 October 2001. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the report of the Headquarters Marine Corps Performance Evaluation Review Board (PERB), dated 28 August 2001, a copy of which is attached.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board substantially concurred with the comments contained in the report of the PERB.

The Board did acknowledge that the reviewing officer would not have been authorized to provide additional comments on an Addendum Page in response to a rebuttal from you to his own comments. However, they found the reviewing officer's Addendum Page dated 17 November 2000 was a permissible response to your statements of 17 August and 27 October 2000 to the reporting senior's appraisal. In this regard, they noted that when the fitness report at issue was initially referred to you on 7 August 2000, you indicated that you had no statement to make. Finally, they found that those of the reviewing officer's comments of 17 November 2000 which took issue with the reporting senior are part of the contested report, and do not invalidate it.

In view of the above, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosure



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

6530-01
IN REPLY REFER TO:
1610
MMER/PERB

28 AUG 2001

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)
ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF MAJOR
[REDACTED], [REDACTED] USMC

Ref: (a) Major [REDACTED] DD Form 149 of 31 May 01
(b) MCO P1610.7E w/Ch 1-2

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 22 August 2001 to consider Major [REDACTED]'s petition contained in reference (a). Removal of the fitness report for the period 000402 to 000607 (TR) was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner contends the report violates several provisions of reference (b) and that it is substantively inaccurate and unjust. Specifically, he argues he was not given the rights afforded him under reference (b), that there are several items of inaccurate information, that the report was not submitted in a timely manner, that he was not allowed to comment on the adverse material added by the Reviewing Officer following his rebuttal, and that the report contains unauthorized addendum pages. To support his appeal, the petitioner furnishes his own detailed statement, a copy of the challenged report, a chronology of events, four advocacy statements, an investigation of 7 June 2000, his Master Brief Sheet, and the 1999 Leftwich Trophy nomination package.

3. In its proceedings, the PERB concluded that the report is both administratively correct and procedurally complete as written and filed. The following is offered as relevant:

a. In his comments, the General Officer Sighter (Major General [REDACTED], Commanding General, 1st Marine Division) clearly explained the reason for late submission. He also indicated the petitioner was offered three occasions to submit rebuttals so his side of the story was documented. It is not likely any essence of the petitioner's performance was lost in preparation of the challenged report. To the contrary--due to the results of one formal and one informal investigation generated by the

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Reporting Senior, and the detailed and painstaking reviews of the Reviewing Officer and General Officer Sighter, the facts were well captured and obviously remained fresh in the minds of all concerned. The late submission merely ensured the accuracy of the recorded information and is not viewed as an invalidating factor. What is paramount is that the petitioner's failings, as conveyed in the fitness report, occurred during the reporting period. That it took the unfortunate situation regarding Lance Corporal [REDACTED] to bring them to light, and resulted in their inclusion in the evaluation, is not viewed as being contrary to either the spirit or intent of reference (b).

b. The Board is not sure what the petitioner means by "unauthorized Addendum Pages" included with the challenged appraisal. The fitness report is exactly as it resides in the Optical Digital Image (ODI) and the petitioner's official military personnel file (OMPF). There are no unauthorized pages attached.

c. In the Reviewing Officer's 17 November 2000 review of the petitioner's rebuttals of 17 August and 27 October 2000, there was no new or additional adversity added. To the contrary. The factual issues addressed by Colonel [REDACTED] were in response to the petitioner's contentions, and were in the spirit of reference (b) in adjudicating the differences raised by the petitioner. In reference (a) the petitioner enumerated four new adverse allegations raised on pages five through seven of the review. Those were not new issues, but dealt directly with the circumstances and environment surrounding the deaths of Lance Corporals [REDACTED] and [REDACTED]. Those issues were freely discussed and argued by the petitioner in his rebuttal. Contrary to his current contention, there was no requirement for the Reviewing Officer to have referred his 17 November 2000 review to the petitioner for further comment.

d. It is clear that when the Reviewing Officer favorably endorsed the petitioner's nomination for the Leftwich Trophy on 20 January 2000, the events and facts that subsequently transpired, and are the subject of the challenged fitness report, were not known. It is also obvious that after reviewing all the subsequent facts, the Reviewing Officer's initial assessment of the petitioner's leadership skills inalterably changed.

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4. The Board's opinion, based on deliberation and secret ballot vote, is that the contested fitness report should remain a part of Major [REDACTED] official military record.

5. The case is forwarded for final action.

[REDACTED]

Colonel, U.S. Marine Corps
Deputy Director
Personnel Management Division
Manpower and Reserve Affairs
Department
By direction of the Commandant
of the Marine Corps